

IN THE UNITED DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

GOVERNMENT'S MOTION TO DISMISS PETITIONER'S
MOTION TO VACATE UNDER 28 U.S.C. § 2255 AS AN
UNAUTHORIZED SECOND OR SUCCESSIVE PETITION

AND NOW comes the United States of America, by and through its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Marshall J. Piccinini, Assistant United States Attorney for said district, and states as follows.

The petitioner has filed a second or successive petition¹ for habeas relief pursuant to 28 U.S.C. § 2255 and asks the Court to examine jurisdictional issues and alleged due process violations concerning his conviction.

The record reveals that the petitioner has not obtained an order from the Third Circuit authorizing this Court to consider the challenges to his conviction as is required under 28 U.S.C. §

¹ On October 6, 2003, London filed his first Motion to Vacate under 28 U.S.C. § 2255. (Doc. 65). On August 11, 2004, this Court denied the motion and ordered that no certificate of appealability be issued as London had not made a substantial showing of the denial of a constitutional right. (Doc. 73). On October 15, 2007, the Third Circuit denied London's Petition for Writ of Mandamus. (Doc. 78). London filed his second Motion to Vacate under 28 U.S.C. § 2255 on May 15, 2008, which is currently pending before this Court. (Doc. 79).

2255(h). Therefore, this court lacks subject matter jurisdiction over the matter. Robinson v. Johnson, 313 F.3d 128, 139-40 (3d Cir. 2002).

Accordingly, the government respectfully requests that the Court dismiss the petition as a second or successive application filed without authorization from the United States Court of Appeals.

As the Third Circuit is the only court with jurisdiction, the petitioner should be directed to seek relief in that Court.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/Marshall J. Piccinini
MARSHALL J. PICCININI
Assistant U.S. Attorney